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DATE: 11 July 2006

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RE: U.S. Serial No. 10/071,590
Filed 2/8/02
Docket No.: 83782

Attached is Applicant's Appeal Brief.

Total Pages Including Cover Sheet 23

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Docket 83782TJS
Customer No. 01333

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of
Dale F. McIntyre, et al

A METHOD OF
AUTOMATICALLY UPDATING
NON-IMAGE DATA
ASSOCIATED WITH A DIGITAL
IMAGE

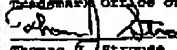
Serial No. 10/071,590

Filed 08 February 2002

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

Group Art Unit: 2167
Confirmation No. 2698
Examiner: Mohammad Ali

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Thomas F. Strouse
July 11, 2006
Date

Sir:

APPEAL BRIEF PURSUANT TO 37 C.F.R. 41.37 and 35 U.S.C. 134

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APPELLANT'S BRIEF ON APPEAL

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the Examiner's Final Rejection of claims 1-11 and 14-16 which was contained in the Office Action mailed November 9, 2005.

A timely Notice of Appeal was filed May 9, 2006.

Real Party In Interest

As indicated above in the caption of the Brief, the Eastman Kodak Company is the real party in interest.

Related Appeals And Interferences

No appeals or interferences are known which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

Status Of The Claims

Claims 1-11 and 14-16 are pending in the application and are finally rejected. Claims 12-13 have been withdrawn.

Appendix I provides a clean, double spaced copy of the claims 1-11 and 14-16 on appeal.

Status Of Amendments

Office Action mailed on July 2, 2004.

Amendment mailed on September 28, 2004.

Restriction Requirement mailed on February 3, 2005.

Response to Restriction Requirement mailed on February 22, 2005.

Office Action mailed on May 12, 2005.

Amendment mailed on August 11, 2005.

Final Rejection mailed on November 9, 2005.

116 Amendment mailed on January 9, 2006.

Advisory Action mailed on January 31, 2006.

Notice of Appeal mailed on May 9, 2006.

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Summary of Claimed Subject Matter

With respect to claim 1, Appellant's invention relates to a method for automatically updating non-image information (*see* page 1, line 28 – page 2, line 30) stored on an electronic memory device at a first storage location using a first image software application running on an associated computer (*see* page 6, lines 5-7; page 6, line 29 - page 7, line 3). The non-image information is associated with a digital image of a user. *See* page 6, line 25 – page 7, line 10. More particularly, the method includes providing new non-image information with respect to the digital image in a second non-related image software application and automatically updating the non-image information stored on the electronic memory device at the first storage location with respect to the new non-image information. *See* page 7, line 22 – page 8, line 26; page 9, line 8 - page 10, line 6.

With respect to claim 8, Appellant's invention relates to a method for automatically updating non-image information stored at a first location using a first image software application running on an associated computer, the non-image information is associated with a digital image of a user. More particularly, the claim requires providing at least one digital image of a user to a remote image server. *See* page 10, lines 7-16. The user grants access to at least one third party to the at least one digital image stored at the remote image server. *See* page 12, lines 1-8; Fig. 4 reference 125. The third party provides new non-image information with respect to the at least one digital image using a second non-related image software application running at the remote site. *See* page 12, lines 9-15; Fig. 4 references 130, 135. Automatically updating the non-image information stored at the first location with the new non-image information. *See* page 12, lines 15-18; Fig. 4 reference 140.

With respect to claim 10, Appellant's invention relates to a method for updating non-image information stored at a first location, the non-image information being associated with a digital image of a user. More particularly, the claim requires providing at least one digital image of a user to a remote image server. *See* page 10, lines 7-16. The user granting access to at least one third party to the at least one digital image stored at the remote image server. *See* page 12, lines 1-8; Fig. 4 reference 125. The third party provides new non-image information with respect to the at least one digital image in a second non-related image software application running at the remote image server. *See* page 12, lines 9-15; Fig. 4 references 130, 135. The user is notified of the existence of the new non-image information with respect to the at least one digital image. *See* page 12,

lines 23-28; Fig. 5 reference 160. Also, the non-image information is automatically updated at the first location with the new non-image information if the user decides to do so. *See* page 12, line 28 – page 13, line 3; Fig. 5 references 165, 170, 175.

With respect to claim 11, Appellant's invention relates to a method for updating non-image information associated with digital images of a user stored on an electronic memory device associated with a user computer at a first storage location. More particularly, the claim requires granting access to the digital images stored on the electronic memory device at the first location to at least one third party computer. *See* page 13, lines 4-9; Fig. 6 reference 180. Transferring at least one of the digital images from the first storage location to the third party computer over a communication network. *See* page 13, lines 9-11; Fig. 6 reference 185. The third party computer providing new non-image information with respect to the at least one digital image in a second non-related image software application running on the third party computer. *See* page 13, lines 11-14; Fig. 6 reference 190. Notifying the user computer over the communication network of the existence of the new non-image information with respect to the at least one digital image. *See* page 13, lines 14-18; Fig. 6 reference 200. Updating the non-image information stored on the user computer at the first storage location with the new non-image information if the user decides to do so. *See* page 13, lines 18-25; Fig. 6 references 205, 210, 215.

With respect to claim 16, Appellant's invention relates to a method for updating non-image information stored on an electronic memory device associated with a computer at a first location, the non-image information being associated with a digital image of a user. More particularly, the claim requires providing at least one digital image of a user to a remote image server. *See* page 10, lines 7-16. The user grants access to at least one third party to the at least one digital image stored at the remote image server. *See* page 12, lines 1-8; Fig. 4 reference 125. The third party providing new non-image information with respect to the at least one digital image in a second non-related image software application running at the remote image server. *See* page 12, lines 9-15; Fig. 4 references 130, 135, and automatically updating the non-image information at the first location with the new non-image information. *See* page 12, lines 15-18; Fig. 4 reference 140.

Grounds of Rejection to be Reviewed on Appeal

The following issues are presented for review by the Board of Patent Appeals and Interferences:

1. Whether the invention of claims 8, 9 and 16 is patentable over Houchin et al. (US 5,983,229) in view of Parks et al. (US 5,025,396).
2. Whether the invention of claim 10 is patentable over Houchin et al. (US 5,983,229) in view of Parks et al. (US 5,025,396).
3. Whether the invention of claim 11 is patentable over Houchin et al. (US 5,983,229) in view of Parks et al. (US 5,025,396).
4. Whether the invention of claims 1-7 and 14-15 is patentable over Houchin et al. (US 5,983,229) in view of Parks et al. (US 5,025,396).

Arguments**CLAIMS 1-11 AND 14-16 ARE PATENTABLE OVER HOUCHIN IN VIEW OF PARKS.**

1. **CLAIMS 8, 9 AND 16 ARE PATENTABLE OVER HOUCHIN IN VIEW OF PARKS BECAUSE HOUCHIN AND PARKS, ALONE OR IN COMBINATION, FAIL TO SHOW ALL OF THE ELEMENTS RECITED IN CLAIMS 8, 9 AND 16.**
 - a. **HOUCHIN AND PARKS DO NOT DISCLOSE, EXPRESSLY OR INHERENTLY, AT LEAST SAID USER GRANTING ACCESS TO AT LEAST ONE THIRD PARTY TO SAID AT LEAST ONE DIGITAL IMAGE STORED AT SAID REMOTE IMAGE SERVER AS RECITED IN INDEPENDENT CLAIMS 8 AND 16.**

Houchin fails to teach or suggest at least said user granting access to at least one third party to said at least one digital image stored at said remote image server as required by independent claims 8 and 16. Rather, Houchin merely discloses the ability to manage extension data. *See* col. 2, lines 18-22.

Accordingly, Appellants disagree with Examiner's assertion that Col. 1 lines 5-11, Col. 2, lines 63-67 and the Abstract discloses the above element. Neither the paragraphs cited by Examiner, or any other paragraph, discloses Appellants claimed element.

Parks fails to remedy the deficiencies of Houchin as Parks also fails to teach or suggest at least said user granting access to at least one third party to said at least one digital image stored at said remote image server, and said third party providing new non-image information with respect to said at least one digital image using a second non-related image software application running at said remote site. Parks merely merges an alphanumeric data stream with a digitized image file.

- b. **HOUCHIN AND PARKS DO NOT DISCLOSE, EXPRESSLY OR INHERENTLY, AT LEAST SAID THIRD PARTY PROVIDING NEW NON-IMAGE INFORMATION WITH RESPECT TO SAID AT LEAST ONE DIGITAL IMAGE USING A SECOND NON-RELATED IMAGE SOFTWARE APPLICATION RUNNING AT SAID REMOTE SITE AS RECITED IN INDEPENDENT CLAIMS 8 AND 16.**

Houchin also fails to teach or suggest at least a third party providing new non-image information with respect to said at least one digital image using a second non-related image software application running at the remote site. Rather, Houchin discloses that extension data may needlessly be transported with an image when an image is copied across a network. See Col. 1, lines 46-49. However, none of Houchin's embodiments disclose a second non-related image software application running on a remote site for providing non-image information. Accordingly, Appellants disagree with Examiner's assertion in the final Office Action stating that Col. 1, lines 5-10 and Col. 1, lines 50-51 discloses the above element. Neither the paragraphs cited by Examiner, or any other paragraph, discloses Appellant's above claimed element.

Parks fails to remedy the deficiencies of Houchin as Parks also fails to teach or suggest at least and said third party providing new non-image information with respect to said at least one digital image using a second non-related image

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software application running at said remote site. Parks merely merges an alphanumeric data stream with a digitized image file.

c. CONCLUSION

Accordingly, Houchin and Parks do not teach, expressly or inherently, the above limitation. Therefore, Appellant respectfully submits that claims 8 and 16 are patentable over the cited references. Because claim 9 depend from claim 8 and include the features recited in the independent claim as well as additional features, Appellant respectfully submits that claim 9 is also patentably distinct over the cited references.

2. CLAIM 10 IS PATENTABLE OVER HOUCHIN IN VIEW OF PARKS BECAUSE HOUCHIN AND PARKS, ALONE OR IN COMBINATION, FAIL TO SHOW ALL OF THE ELEMENTS RECITED IN CLAIM 10.

a. HOUCHIN AND PARKS DO NOT DISCLOSE, EXPRESSLY OR INHERENTLY, AT LEAST NOTIFYING SAID USER OF THE EXISTENCE OF SAID NEW NON-IMAGE INFORMATION WITH RESPECT TO SAID AT LEAST ONE DIGITAL IMAGE AS RECITED IN INDEPENDENT CLAIM 10.

Houchin fails to teach or suggest at least notifying said user of the existence of said new non-image information with respect to said at least one digital image as required by independent claim 10. Rather, Houchin discloses that an application makes decisions (*See* Col. 4, lines 7-10), however, nowhere does the Houchin device notify a user of the existence of said new non-image information.

Parks fails to remedy the deficiencies of Houchin as Parks also fails to teach or suggest at least notifying said user of the existence of said new non-image information with respect to said at least one digital image. Rather, Parks discloses a device to merge a digital image with an alphanumeric character string. *See* Col. 15, lines 12-16.

- b. HOUCHIN AND PARKS DO NOT DISCLOSE, EXPRESSLY OR INHERENTLY, AT LEAST SAID USER GRANTING ACCESS TO AT LEAST ONE THIRD PARTY TO SAID AT LEAST ONE DIGITAL IMAGE STORED AT SAID REMOTE IMAGE SERVER AS RECITED IN INDEPENDENT CLAIM 10.**

Houchin fails to teach or suggest at least said user granting access to at least one third party to said at least one digital image stored at said remote image server as required by independent claim 10. Rather, Houchin merely discloses the ability to manage extension data. *See* col. 2, lines 18-22. Accordingly, Appellants disagree with Examiner's assertion that Col. 1 lines 5-11, Col. 2, lines 63-67 and the Abstract discloses the above element. Neither the paragraphs cited by Examiner, or any other paragraph, discloses Appellants claimed element.

Parks fails to remedy the deficiencies of Houchin as Parks also fails to teach or suggest at least said user granting access to at least one third party to said at least one digital image stored at said remote image server, and said third party providing new non-image information with respect to said at least one digital image using a second non-related image software application running at said remote site. Parks merely merges an alphanumeric data stream with a digitized image file.

- c. HOUCHIN AND PARKS DO NOT DISCLOSE, EXPRESSLY OR INHERENTLY, AT LEAST SAID THIRD PARTY PROVIDING NEW NON-IMAGE INFORMATION WITH RESPECT TO SAID AT LEAST ONE DIGITAL IMAGE USING A SECOND NON-RELATED IMAGE SOFTWARE APPLICATION RUNNING AT SAID REMOTE SITE AS RECITED IN INDEPENDENT CLAIM 10.**

Houchin also fails to teach or suggest at least a third party providing new non-image information with respect to said at least one digital image using a second non-related image software application running at the remote site. Rather, Houchin discloses that extension data may needlessly be transported with an image when an image is copied across a network. *See* Col. 1, lines 46-49. However, none of Houchin's embodiments disclose a second non-related image software application running on a remote site. Accordingly, Appellants disagree with Examiner's assertion that Col. 1, lines 5-10 and Col. 1, lines 50-51 discloses the above element. Neither the paragraphs cited by Examiner, or any other paragraph, discloses Appellant's above claimed element.

Parks fails to remedy the deficiencies of Houchin as Parks also fails to teach or suggest at least and said third party providing new non-image information with respect to said at least one digital image using a second non-related image software application running at said remote site. Parks merely merges an alphanumeric data stream with a digitized image file.

d. CONCLUSION

Accordingly, Houchin and Parks do not teach, expressly or inherently, the above limitations. Therefore, Appellant respectfully submits that claim 10 is patentable over the cited references.

3. CLAIM 11 IS RE PATENTABLE OVER HOUCHIN IN VIEW OF PARKS BECAUSE HOUCHIN AND PARKS, ALONE OR IN COMBINATION, FAIL TO SHOW ALL OF THE ELEMENTS RECITED IN CLAIM 11.

a. HOUCHIN AND PARKS DO NOT DISCLOSE, EXPRESSLY OR INHERENTLY, AT LEAST NOTIFYING SAID USER OF THE EXISTENCE OF SAID NEW NON-IMAGE INFORMATION WITH RESPECT TO SAID AT LEAST ONE DIGITAL IMAGE AS RECITED IN INDEPENDENT CLAIM 11.

Houchin fails to teach or suggest at least notifying said user of the existence of said new non-image information with respect to said at least one digital image as required by independent claim 11. Rather, Houchin discloses that an application makes decisions (*See* Col. 4, lines 7-10), however, nowhere does the Houchin device notify a user of the existence of said new non-image information.

Parks fails to remedy the deficiencies of Houchin as Parks also fails to teach or suggest at least notifying said user of the existence of said new non-image information with respect to said at least one digital image. Rather, Parks discloses a device to merge a digital image with an alphanumeric character string. *See* Col. 15, lines 12-16.

b. HOUCHIN AND PARKS DO NOT DISCLOSE, EXPRESSLY OR INHERENTLY, AT LEAST GRANTING ACCESS TO SAID DIGITAL IMAGES STORED ON SAID ELECTRONIC MEMORY DEVICE AT SAID FIRST LOCATION TO AT LEAST ONE THIRD PARTY COMPUTER AS RECITED IN INDEPENDENT CLAIM 11.

Houchin fails to teach or suggest at least granting access to said digital images stored on said electronic memory device at said first location to at least one third party computer as required by independent claim 11. Appellants disagree with Examiner's assertion that Col. 1 lines 5-11, Col. 2, lines 63-67 and the Abstract discloses the above element. Neither the paragraphs cited by Examiner, or any other paragraph, discloses Appellants claimed element. Rather, Houchin merely discloses the ability to manage extension data. *See* col. 2, lines 18-22.

Parks fails to remedy the deficiencies of Houchin as Parks also fails to teach or suggest at least granting access to said digital images stored on said electronic memory device at said first location to at least one third party computer. Parks merely merges an alphanumeric data stream with a digitized image file.

- c. **HOUCHIN AND PARKS DO NOT DISCLOSE, EXPRESSLY OR INHERENTLY, AT LEAST SAID THIRD PARTY PROVIDING NEW NON-IMAGE INFORMATION WITH RESPECT TO SAID AT LEAST ONE DIGITAL IMAGE USING A SECOND NON-RELATED IMAGE SOFTWARE APPLICATION RUNNING AT SAID REMOTE SITE AS RECITED IN INDEPENDENT CLAIM 11.**

Houchin also fails to teach or suggest at least a third party providing new non-image information with respect to said at least one digital image using a second non-related image software application running at the remote site. Rather, Houchin discloses that extension data may needlessly be transported with an image when an image is copied across a network. *See* Col. 1, lines 46-49. However, none of Houchin's embodiments disclose a second non-related image software application running on a remote site. Accordingly, Appellants disagree with Examiner's assertion that Col. 1, lines 5-10 and Col. 1, lines 50-51 discloses the above element. Neither the paragraphs cited by Examiner, or any other paragraph, discloses Appellant's above claimed element.

Parks fails to remedy the deficiencies of Houchin as Parks also fails to teach or suggest at least and said third party providing new non-image information with respect to said at least one digital image using a second non-related image software application running at said remote site. Parks merely merges an alphanumeric data stream with a digitized image file.

d. **CONCLUSION**

Accordingly, Houchin and Parks do not teach, expressly or inherently, the above limitations. Therefore, Appellant respectfully submits that claim 11 is patentable over the cited references.

4. **CLAIM 1 IS RE PATENTABLE OVER HOUCHIN IN VIEW OF PARKS BECAUSE HOUCHIN AND PARKS, ALONE OR IN COMBINATION, FAIL TO SHOW ALL OF THE ELEMENTS RECITED IN CLAIM 1.**

- a. **HOUCHIN AND PARKS DO NOT DISCLOSE, EXPRESSLY OR INHERENTLY, AT LEAST SAID THIRD PARTY PROVIDING NEW NON-IMAGE INFORMATION WITH RESPECT TO SAID DIGITAL IMAGE IN A SECOND NON-RELATED IMAGE SOFTWARE APPLICATION AS RECITED IN INDEPENDENT CLAIM 1.**

Houchin also fails to teach or suggest at least providing new non-image information with respect to said digital image in a second non-related image software application. Rather, Houchin discloses that extension data may needlessly be transported with an image when an image is copied across a network. *See* Col. 1, lines 46-49. However, none of Houchin's embodiments disclose a second non-related image software application for providing non-image information. Accordingly, Appellants disagree with Examiner's assertion that Col. 1, lines 5-10 and Col. 1, lines 50-51 discloses the above element. Neither the paragraphs cited by Examiner, or any other paragraph, discloses Appellant's above claimed element.

Parks fails to remedy the deficiencies of Houchin as Parks also fails to teach or suggest at least providing new non-image information with respect to said digital image in a second non-related image software application. Parks merely merges an alphanumeric data stream with a digitized image file.

- b. **HOUCHIN AND PARKS DO NOT DISCLOSE, EXPRESSLY OR INHERENTLY, AT LEAST AUTOMATICALLY UPDATING SAID NON-IMAGE INFORMATION STORED ON SAID ELECTRONIC MEMORY DEVICE AT SAID FIRST STORAGE LOCATION WITH RESPECT TO SAID NEW NON-IMAGE INFORMATION AS RECITED IN INDEPENDENT CLAIM 1.**

As admitted by the Final Office Action, Houchin fails to teach or suggest at least automatically updating. Further, Houchin fails to teach or suggest at least automatically updating said non-image information stored on said electronic memory device at said first storage location with respect to said new non-image information. Rather, Houchin discloses a file structure 10 (TIFF file

and flash PIX) that includes a header, image data 13, non-image data 15, and extensions. In Houchin, a software application determines whether certain extensions are present and whether or not the extensions should be maintained or deleted if core elements of the file are modified. Upon modification of the core elements, Houchin's entire file structure 10 is modified. Accordingly, Houchin does not automatically update at a first storage location.

Parks fails to remedy the deficiencies of Houchin as Parks also fails to teach or suggest at least automatically updating said non-image information stored on said electronic memory device at said first storage location with respect to said new non-image information. Rather, Parks merely merges an alphanumeric data stream with a digitized image file. At best, Parks performs a backup is automatically performed. *See* Col. 10, lines 4-5. Nevertheless, Parks does not disclose automatically updating said non-image information at said first storage location.

Therefore, Appellant's respectfully submit that claim 1 is patentable over the cited references.

c. CONCLUSION

Accordingly, Houchin and Parks do not teach, expressly or inherently, the above limitations. Therefore, Appellant respectfully submits that claim 1 is patentable over the cited references. Because claims 2-7 and 14-15 depend from claims 1 and include the features recited in the independent claim, Appellant's respectfully submit that claims 2-7 and 14-15 are also patentably distinct over the cited references.

Summary

For the above reasons, Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the rejection by the Examiner and mandate the allowance of Claims 1-11 and 14-16.

The Commissioner is hereby authorized to charge any fees in connection with this communication to Deposit Account No. 05-0225.

Respectfully submitted,

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Enclosures

If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.



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Appendix I - Claims on Appeal

1. A method for automatically updating non-image information stored on an electronic memory device at a first storage location using a first image software application running on an associated computer, said non-image information being associated with a digital image of a user, comprising the steps of:

providing new non-image information with respect to said digital image in a second non-related image software application; and

automatically updating said non-image information stored on said electronic memory device at said first storage location with respect to said new non-image information.

2. The method of claim 1 wherein said second non-related image software application further comprises an application for the production of an image product.

3. The method of claim 1 wherein said second non-related image software application runs on said associated computer

4. The method of claim 1 wherein said non-image information and said digital image are stored at said first storage location.

5. The method of claim 3 wherein said non-image information is contained within said digital image.

6. The method of claim 1 wherein said new non-image information is used to update said non-image information associated with a group of said digital images of a user.

7. The method of claim 6 wherein said group of said digital images comprises an album page and said non-image information is provided with respect to a feature of the album page.

8. A method for automatically updating non-image information stored at a first location using a first image software application running on an associated computer, said non-image information being associated with a digital image of a user, comprising steps of:

providing at least one digital image of a user to a remote image server;

said user granting access to at least one third party to said at least one digital image stored at said remote image server;

said third party providing new non-image information with respect to said at least one digital image using a second non-related image software application running at said remote site; and

automatically updating said non-image information stored at said first location with said new non-image information.

9. The method according to claim 8 wherein the step of said third party providing said new non-image information with respect to said at least one said digital image further comprises providing comments with respect to a photo album stored at said remote site.

10. A method for updating non-image information stored at a first location, said non-image information being associated with a digital image of a user, comprising steps of:

providing at least one digital image of a user to a remote image server;

said user granting access to at least one third party to said at least one digital image stored at said remote image server;

said third party providing new non-image information with respect to said at least one digital image in a second non-related image software application running at said remote image server;

notifying said user of the existence of said new non-image information with respect to said at least one digital image; and

automatically updating said non-image information at said first location with said new non-image information if said user decides to do so.

11. A method for updating non-image information associated with digital images of a user stored on an electronic memory device associated with a user computer at a first storage location, comprising the steps of:

granting access to said digital images stored on said electronic memory device at said first location to at least one third party computer;
transferring at least one of said digital images from said first storage location to said third party computer over a communication network;
said third party computer providing new non-image information with respect to said at least one digital image in a second non-related image software application running on said third party computer;
notifying said user computer over said communication network of the existence of said new non-image information with respect to said at least one digital image; and
updating said non-image information stored on said user computer at said first storage location with said new non-image information if said user decides to do so.

14. The method according to claim 3 wherein said associated computer is located remote from said first storage location.

15. The method according to claim 14 wherein said second non-related image software application is running on a remote computer of a third party.

16. A method for updating non-image information stored on an electronic memory device associated with a computer at a first location, said non-

image information being associated with a digital image of a user, comprising steps of:

providing at least one digital image of a user to a remote image server;

said user granting access to at least one third party to said at least one digital image stored at said remote image server;

said third party providing new non-image information with respect to said at least one digital image in a second non-related image software application running at said remote image server;

automatically updating said non-image information at said first location with said new non-image information.

Appendix II - Evidence

None

Appendix III – Related Proceedings

None